

****NOT FOR PRINTED PUBLICATION****

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

RONNY LEE WILLIAMS

§

VS.

§

CIVIL ACTION NO. 9:20cv39

DIRECTOR, TDCJ-CID

§

ORDER OVERRULING OBJECTIONS AND ACCEPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Ronny Lee Williams, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this court.

Petitioner is challenging convictions for aggravated robbery, assault on a public servant and burglary of a habitation. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be dismissed without prejudice as successive.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Petitioner filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections. After careful consideration, the court is of the opinion the objections are without merit. In his objections, petitioner acknowledges he previously filed a petition for writ of habeas corpus challenging the same convictions. However, he contends new retroactive constitutional law has come into effect. Title 28 U.S.C. § 2244(b)(3) provides that a district court may entertain a successive habeas petition only when the appropriate court of appeals has authorized the petition. As petitioner does not state the United States Court of Appeals for the Fifth Circuit has authorized him to proceed with a successive petition, this court lacks jurisdiction over the petition regardless of the basis upon which petitioner seeks relief. Nor

****NOT FOR PRINTED PUBLICATION****

should the petition be stayed while petitioner seeks authorization from the Fifth Circuit. Petitioner will be free to refile his petition if authorization is granted.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ACCEPTED** as the opinion of the court. An appropriate final judgment shall be entered.

Further, the court is of the opinion petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See* U.S.C. § 2253. The standard that must be met in order to receive a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, petitioner is not required to demonstrate that he would prevail on the merits. Rather, he need only demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of petitioner, and the severity of the penalty imposed may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

Petitioner has not shown that the question of whether this petition is successive is subject to debate among jurists of reason. The factual and legal questions raised have been consistently resolved adversely to his position and the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

So Ordered and Signed

May 31, 2021



Ron Clark
Senior Judge